



STATE OF DELAWARE

**PUBLIC SERVICE COMMISSION**  
861 SILVER LAKE BLVD.  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE:  
FAX:


(302) 736-7500  
(302) 739-4849

February 22, 2016

MEMORANDUM

**REVISED MARCH 8, 2016**

TO: The Chair and Members of the Commission

FROM: Toni Loper, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION OF CHOOSE ENERGY, INC. FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED OCTOBER 26, 2015; FILED JANUARY 21, 2016) - PSC DOCKET No. 15-1514

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**Background**

On January 21, 2016, Choose Energy, Inc. ("Choose" or the "Company") filed an application (the "Application") with the Delaware Public Service Commission ("Commission") for an Electric Supplier Certificate ("ESC") to act as a Broker in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").<sup>1</sup>

**Application**

The Company's original filing was submitted on October 26, 2015, but the submitted Application did not meet the minimum filing requirements ("MFRs"). Staff requested the Company file the following additional documentation: a) a copy of the Delaware business license, b) a copy of the certificate of good standing issued by the Delaware Secretary of State, c) a professional resume for each principal officer responsible for Delaware operations, and d) a signed, sworn verification letter for the original Application<sup>2</sup> and for any subsequent filings in support of the Application, as required.

**Review and Analysis**

The initial review of the Application and Company's website led Staff to issue a cease and desist to the Company on November 10, 2015. The cease and desist was issued due to the Company's website listing Delaware in its service territory prior to receiving certification with the PSC.<sup>3</sup> Subsequently, the

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<sup>1</sup> Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

<sup>2</sup> The verification submitted with original application was not notarized.

<sup>3</sup> 26 *Del. C.* §1012(a) Certification requirements - Prior to doing business in Delaware, every electric supplier seeking to provide electric supply service to customers shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that electric suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier to comply with any of the requirements promulgated by the

Company notified Staff, via email that all references to Delaware were removed from the website and Staff confirmed that it was removed.

Authority to do Business in Delaware

The Company is incorporated and formed under the laws of the State of Delaware and has provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware.

Resident Agent

The Company supplied the contact information for a Delaware Registered Agent listed in the Application as Northwest Registered Agent Service, Inc., Wilmington, DE.

Compliance with Regional Requirements

The Company affirms in its Application that it will only present electricity supply contracts to its customers from Marketers/Electric Suppliers who are in compliance with all applicable PJM requirements.

Financial, Operational, Managerial and Technical Ability

The Company provided confidential financial statements as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. Staff believes that these financial documents show substantial evidence of the Applicant's ability to provide services as a Broker in the State of Delaware.

The Company anticipates acting as a Broker serving residential, small commercial, large commercial and industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Application states that the Company currently offers service in California, Connecticut, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas, and Washington DC, and has no pending applications in any other state at the time of the filing. Staff has confirmed that the Company is licensed in those states. The original filing, dated October 26, 2015, the Company asserted that it was currently serving commercial customers in Delaware. After further investigation Staff notes that this was an error. In a letter from the Company dated February 16, 2016, it was asserted that the Company, in fact, was not currently serving any customers in the State of Delaware. Further, the Application states that the Company has not been denied approval nor had its authority revoked by any state commission. Staff believes that this information shows substantial evidence of the Applicant's operational and technical ability to provide services as a Broker in the State of Delaware.

Staff conducted an internet review of the licensing of the Company. Staff discovered that the Applicant's authority to do business in the State of Maine was revoked in June 2013, by the Secretary of State due to not filing a timely annual report. The Company reapplied with the Maine Public Utility Commission in 2014 and has since been granted authority to do business in that state.

The Application included a summary of the key operating personnel of the Company. Mr. Jerry Dyess, Founder and CCO, has over 13 years' experience in the energy market as well as senior business development and management positions with several non-energy industry organizations. He has extensive experience with energy markets, supply, and the energy regulatory environment. Ms. Kerry Cooper, Chief Executive Officer, has held several executive roles over 13 years with responsibilities that

include; marketing, strategy and business development, oversight of operations, finances, sales and online platform development. Mr. John Tough, Vice-President of Operations & Business Development, has been with Choose Energy since 2012, his responsibilities include managing corporate development, acquisition strategy, and managing the Product Marketing Manager team. Prior to joining Choose Mr. Tough held positions with responsibilities including; advising on mergers and acquisitions, equity and debt capital raise events for growing and established companies, revenue models, and regulatory issues. Staff performed an internet review of the Company and its key operating personnel. The search did not reveal any issues. Staff believes that this information shows substantial evidence of the Applicant's operational, managerial, and technical ability to provide services as a Broker in the State of Delaware.

#### Surety Bond

The Company did not post a surety bond because it is a Broker only and there are no service agreements between the Company and any Delaware Electric Distribution Company. The Company will not collect any fees or deposits from any of its customers for any of its brokerage services.

#### Verification of Application

The Application and subsequent filings were verified in signed, sworn verification letters by Ms. Kerry Cooper, CEO.

#### Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

#### Contracts

The Company also did not provide any sample contracts for residential or small commercial customers because it is a Broker only and does not and will not have contracts with Retail Electric Customers to provide Electric Supply Service.

#### Statement of Criminal Activity

The Applicant stated in the Application that they have not been charged or convicted of any criminal activity nor have any of its principals or corporate officers. The Applicant has no affiliated interests. An internet review of the Company and its principals revealed no outstanding issues.

#### **Legal Review**

On February 23, 2016, following Staff's completed review and analysis of the Application, Staff forwarded its final analysis to the assigned attorney to confirm that all required documentation requested and received from the Company was in compliance with Delaware law and the Supplier Rules and Regulations.

#### **Staff Recommendation**

Based on Staff's review of the Application, the Company has satisfied the requirements of the Act and the Supplier Rules. The Company resolved all outstanding issues with Staff and the completed Application supports the Company's request for certification. Staff's review and analysis of the Application submitted by the Company demonstrates substantial evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Therefore, Staff recommends the Commission approve the Application.